

The Administrative Law Judge awarded claimant permanent partial disability benefits based upon an 11.75 percent work disability. Claimant requested this review and asks the Appeals Board to review the finding of nature and extent of disability. Claimant contends the work disability determined by the Judge is too low and the respondent contends claimant is entitled to a scheduled injury to the right arm only.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be affirmed.

Claimant worked for the respondent for 14½ years as a loan adjuster. In that position, she collected loans and delinquent accounts and processed garnishments and levies. In late 1992, claimant's duties changed when another bank purchased respondent. At that time claimant was given a computer and required to prepare merger-related reports. The morning of June 18, 1993, claimant woke with her hands hurting and swollen. That morning claimant went into work, reported her symptoms to her supervisor and requested permission to see a physician. The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent on or about June 17, 1993, and that claimant is entitled to workers compensation benefits based upon the law for injuries occurring before July 1, 1993.

Claimant first sought medical treatment from her family physician, Dr. Ron Reichenberger. He diagnosed bilateral hand pain, ordered x-rays and prescribed medication. Claimant returned to work until July 8, 1993 when she was terminated, along with many others, as a result of the merger. Although off work, the pain and numbness in her hands did not resolve. Therefore, Dr. Reichenberger ordered a nerve conduction study in October 1993 which revealed right median nerve damage and possible carpal tunnel syndrome. He then referred claimant to Dr. Tyrone Artz for treatment. However, the insurance company canceled claimant's appointment with that doctor.

After a preliminary hearing, claimant was referred to board-certified orthopedic surgeon J. Mark Melhorn, M.D. He first saw claimant on August 16, 1994 for bilateral hand pain and swelling. He initially diagnosed bilateral tendinitis in the hands and wrists. However, after another nerve conduction confirmed right median nerve neuropathy, he changed his diagnosis to carpal tunnel syndrome in the right hand. After he explained that surgery was optional, claimant elected non-surgical treatment. When injections into the wrists did not resolve claimant's symptoms, Dr. Melhorn released her from treatment. Dr. Melhorn testified that he believes that claimant has sustained a 7.05 percent functional impairment to the right forearm. He released claimant to return to her regular work with task rotation. Although he acknowledges that claimant was still complaining of symptoms in her left hand and wrist when he last saw her, he does not believe she has any permanent impairment of function in that arm.

Claimant presented the testimony of Ernest R. Schlachter, M.D., who examined claimant in October of 1994. He believes claimant has developed overuse syndrome in both upper extremities with early carpal tunnel syndrome and tendinitis in both wrists which constitutes a 10 percent permanent partial impairment of function to the right upper extremity and a 5 percent permanent partial impairment of function to the left upper extremity that combines to a 9 percent whole body functional impairment. He also believes claimant should observe permanent work restrictions of no repetitive pushing, pulling, twisting or grasping motion with either arm or hand; no lifting more than 10 pounds on a repetitive basis or 15 pounds at any time with either arm or hand; and that she should avoid vibratory tools and cold environments.

The parties presented the testimony of two labor market experts, Jerry D. Hardin and Karen Crist Terrill. Mr. Hardin evaluated claimant at her attorney's request and found that she had a 40-45 percent loss of ability to perform work in the open labor market based upon Dr. Schlachter's restrictions. Respondent hired Ms. Terrill to evaluate claimant. She believes claimant has a 43 percent loss of ability to perform work in the open labor market based upon Dr. Schlachter's restrictions and a zero percent loss based on Dr. Melhorn's.

Although his initial report indicated claimant had not lost any of her ability to earn comparable wages, Mr. Hardin changed that opinion and indicated claimant has an approximate 27 percent loss of her ability to earn a comparable wage assuming she could not return to a bank or collection position because it required repetitive computer work. Ms. Terrill testified claimant could return to work as a loan adjuster and earn a comparable wage.

Based upon the above evidence, the Administrative Law Judge found that claimant had sustained permanent injury to both upper extremities and that she was entitled to permanent partial general disability benefits under the provision of K.S.A. 1992 Supp. 44-510e. By considering the opinions of both labor market experts, the Administrative Law Judge determined that claimant had sustained an 11.75 percent work disability. The Administrative Law Judge specifically found that claimant did not sustain any loss of ability to earn a comparable wage because she could return to work as a loan adjuster. The Appeals Board agrees with the analysis and conclusions of the Administrative Law Judge and that the Award should be affirmed.

The Appeals Board adopts the findings of the Administrative Law Judge that are not inconsistent with the specific findings made herein.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated October 3, 1995 should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1996.

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BOARD MEMBER

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BOARD MEMBER

c: Stephen J. Jones, Wichita, KS  
Robert G. Martin, Wichita, KS  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director